IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 14692 of 2006(Y)

PETITIONER:

SMT.M.JAYANTHI, W/O.MONA,
D/O.SMT.PODI AGASARAMOOLE, POYYANKANDA,
BENGARA MANJESWARA, NEAR RAILWAY GATE,
HOSONGADI, KASARAGODE TALUK.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENTS:

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1. **SRI.SURENDRA MANJESWAR,**
   S/O.LATE PANJI, ELLUPADAPPU,
   HOSANGADI, BANGARA MANJESWAR VILLAGE,
   KASARGOD TALUK.

2. **THE TAHASILDAR, TALUK OFFICE,**
   KASARGOD.

3. **THE SUB COLLECTOR,**
   KASARGODE AT KANHANGAD.

4. **THE COMMISSIONER, LAND REVENUE,**
   PUBLIC OFFICE BUILDING, MUSEUM JUNCTION,
   TRIVANDRUM.

5. **SUNDARA.M., S/O.LATE PANJI,**
   HOUSE NO.560, WARD NO.7, HOSANGADI,
   ANGADIPADAVE, VIA MANJESWAR, KASARGODE TALUK.

6. **ZUHARA.B.M., W/O.MOHAMMED RAZAK,**
   GARDEN HOUSE, UDYAWARA VILLAGE, KASARGODE TALUK.

BY GOVERNMENT PLEADER SRI. I.V. PRAMOD for R2 to R4
SRI.SURENDRA MANJESHWAR(PARTY-IN-PERSON) for R1
SRI.N.RAJAGOPALAN NAIR for R6

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON 25/06/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PATTA DTD. 13/01/1987 ISSUED BY 2ND RESPONDENT.

EXT.P2: COPY OF THE ORDER ISSUED BY TAHSILDAR L.A., KASARGODE REJECTING THE APPLICATION FILED BY THE 1ST RESPONDENT DTD. 15/11/1971.

EXT.P3: COPY OF THE ORDER ISSUED BY THE R.D.O., KASARGOD AT KANHANGAD DISMISSING THE APPEAL FILED BY THE 1ST RESPONDENT DTD. 23/03/1995.

EXT.P4: COPY OF THE ORDER ISSUED BY THE SECRETARY BOARD OF REVENUE DISMISSING THE REVISION PETITION FILED BY 1ST RESPONDENT DTD. 16/06/1997.

EXT.P5: COPY OF THE ORDER IN G.O.(RT) 4784/9 ISSUED BY THE GOVERNMENT SETTING ASIDE THE ASSIGNMENT ORDER PASSED IN FAVOUR OF THE PETITIONER DTD. 23/12/98.

EXT.P6: COPY OF THE JUDGMENT IN O.P.NO.2237/2001 DTD. 14/03/2001.

EXT.P7: COPY OF THE JUDGMENT IN W.A.NO.1648/2001 DTD. 6/07/2001.

EXT.P8; COPY OF THE JUDGMENT IN O.P.NO.29307/2002 DTD. 13/06/2003.

EXT.P9: COPY OF THE JUDGMENT IN C.C.C.NO.1176/04/2002 DTD. 20/01/2005.

EXT.P10: COPY OF THE I.A.NO.1124/2005 FILED IN C.C.C.NO.1176/04 DTD. 19/01/05.

EXT.P11: COPY OF THE ASSIGNMENT PASSED BY THE 2ND RESPONDENT IN FAVOUR OF 1ST RESPONDENT DTD. 26/10/2004.

EXT.P12: COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE 3RD RESPONDENT DTD. 29/11/2004.

EXT.P13: COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DTD. 29/11/2004.

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EXT.P14: COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT DISMISSING EXT.P12 APPEAL DTD. 09/08/2005.

EXT.P15: COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT DISMISSING EXT.P12 APPEAL DTD. 3/09/05.

EXT.P16: COPY OF THE REVISION PETITION NO.43208/2005 BEFORE THE COMMISSIONER LAND REVENUE DTD. 3/09/2005.

EXT.P17: COPY OF THE ORDER PASSED BY THE COMMISSIONER LAND REVENUE DTD. 29/04/06.

EXT.P18: COPY OF THE ENGLISH TRANSLATION OF SALE DEED NO. 1692/1995 ON THE FILE OF S.R.O., MANJESWAR DTD. 24/08/1995.

6TH RESPONDENT'S EXHIBITS:

EXT.R6(A): COPY OF THE REGISTERED SALE DEED DTD. 24/08/1995 EXECUTED BY THE PETITIONER IN FAVOUR OF 6TH RESPONDENT.

EXT.R6(B): COPY OF ENGLISH TRANSLATION OF EXT.R6(A).

EXT.R6(C): COPY OF THE BASIC TAX RECEIPT OBTAINED BY THE PETITIONER DTD. 22/05/89.

EXT.R6(D): COPY OF THE BASIC TAX RECEIPT OBTAINED BYTHE 6TH RESPONDENT DTD. 25/08/95.

EXT.R6(E): COPY OF THE BASIC TAX RECEIPT OBTAINED BY THE 6TH RESPONDENT DTD. 19/04/97.

EXT.R6(F): COPY OF THE BASIC TAX RECEIPT OBTAINED BY THE 6TH RESPONDENT DTD. 27/06/2001.

EXT.R6(G): COPY OF THE BASIC TAX RECEIPT OBTAINED BY THE 6TH RESPONDENT DTD. 25/05/2004.

EXT.R6(H): COPY OF THE BASIC TAX RECEIPT OBTAINED BY THE 6TH RESPONDENT DTD. 10/07/2006.

EXT.R6(I): COPY OF THE SKETCH REQUIRED IN I.A.NO.14/86 OF BENGARA MANJESWAR VILLAGE.

EXT.R6(J): COPY OF THE CERTIFICATE OF ENCUMBRANCE OF PROPERTY RELATING TO THE PROPERTY COVERED BY EXT.R6(A) DTD. 25/05/2004.

EXT.R6(K): COPY OF THE RECEIPT OBTAINED BY THE PETITIONER FOR PAYMENT OF THEBANK LOAN RESULTED IN REVENUE RECOVERY DTD. 25/08/95.

EXT.R6(L): COPY OF THE POSSESSION CERTIFICATE ISSUED TO 6TH RESPONDENT BY THE VILLAGE OFFICER.

EXT.R6(M): COPY OF THE APPEAL MEMORANDUM FILED BY THE 1ST AND 5TH RESPONDENTS BEFORE THE DISTRICT MAGISTRATE, KASARAGODE AGAINST I.A.NO.14/1986.

/TRUE COPY/

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.14692 of 2006-Y

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Dated this the 25th day of June, 2007.

JUDGMENT

"CR"

Petitioner challenges Exts.P11, P14 and P17 orders which are referable to the provisions of the Kerala Land Conservancy Act, 1957, hereinafter referred to as the "Conservancy Act", the Kerala Land Conservancy Rules, 1958, hereinafter referred to as the "Conservancy Rules", the Kerala Government Land Assignment Act, 1960, "the Assignment Act", for short, and the Kerala Land Assignment Rules, 1964, "the Assignment Rules" for short.

2. Petitioner is the daughter of the sister of respondents 1 and 5 and thus, the grand-daughter of Panchi and Korapaly.

3. 47 cents in R.S.87/9 and 20 cents in R.S.87/8 of

Manjeswar Village were assigned to Panchi and his wife Korapaly in 1936. As they failed to pay land tax due on the land, the assignment was cancelled in 1937. No documents were there to show that the above cancellation of the assignment was with notice to them or that the cancellation was known to the assignees. On 20-4-1959, the assignees filed application for the issuance of permanent Patta. By letter dated 15-5-1959, Panchi, the applicant, was directed to file an application in the prescribed form stating that "the petitioner is informed that claim for patta land will be considered on the application received in the prescribed manner". Accordingly, an application in the prescribed form was filed before the Tahsildar, Kasaragod on 18-5-1959. No documents were there to show that the said application was considered or that any action was taken on that application.

4. In 1987, the aforesaid land was assigned to the petitioner, pursuant to her application dated 22-12-1986 wherein it was alleged that she was holding that property for more than 10 years. A report was prepared by Sri.V.K.Balakrishnan, the Special Tahasildar on 20-1-1987 and

it was forwarded to Sri.V.Krishnan, the Deputy Collector, Kasaragod. The above report would show the assignment of land in favour of Panchi and the cancellation in 1937. The above report of the Tahsildar would reveal the existence of a tiled house bearing door No.M.P.VII-560 of Manjeshwar Panchayath, and the existence of 2 bearing coconut trees aged about 40 years, 5 cashew plants aged about 10 years, 3 cashew plants aged about 5 years and other trees of spontaneous growth in the above property when he visited the property. The above report would further reveal that though the assignment was cancelled as early as in 1937, the parties were in possession of the property.

5. When respondents 1 and 5 came to know of the above assignment of land, they challenged it before the appellate authority. That appeal was dismissed. They preferred a revision before the Board of Revenue. That revision was dismissed. Against the above order they preferred a revision before the Government. That revision was disposed of as per order dated 23-11-1998, whereby the Special Tahsildar was directed to consider the matter. The last para of

that order reads:

> "On perusing the connected records and after hearing the revision petitioner it is seen that the assignment was cancelled without issuing prior notice as prescribed in Kerala Land Assignment Rules. It is not clear why so much land was assigned to Kumari Jayanthi who is unmarried and alleged to have other landed properties. In the circumstance, the assignment of 67 cents of land to Kumari Jayanthi, the respondent herein is set aside with direction to the Special Tahsildar, Manjeswar for fresh disposal of the case taking into account the above facts and also after examining the eligibility of Kumari Jayanthi for assignment of land in terms of the Kerala Land Assignment Rules. The Revision Petition is disposed of accordingly".

6. Following the above direction, the Tahsildar passed order upholding the assignment in favour of the petitioner, however, without hearing respondents 1 or 5.

7. The aforesaid facts were noticed by this Court while

Ext.P8 judgment was rendered, on the basis of the entire files regarding the assignment which were then placed before the Court, on behalf of the State.

8. Ext.P8 judgment was delivered noticing that the aforesaid facts were not appropriately considered by the Special Tahsildar following the remit made by the Government, as noticed above. The assignment in favour of the petitioner herein was accordingly set aside and the matter remitted for reconsideration with a direction to afford opportunity of hearing to the petitioner and respondents 1 and 5 herein.

9. Though the order of assignment was set aside and the Special Tahsildar was directed to reconsider the matter afresh in accordance with the Assignment Rules and the provisions of the Conservancy Act and to pass appropriate orders, Ext.P11 order was issued cancelling the assignment in favour of the writ petitioner, merely by reference to Ext.P8 judgment. It was ordered thereby that the land is to be resumed to the Government on appropriate mahazar and

action will be taken to assign the land in favour of the first respondent herein, who was the writ petitioner in Ext.P8 case. In issuing that order, the Special Tahsildar had noticed that the claim of respondent No.1 was essentially by tagging along the possession of his late parents. On behalf of the writ petitioner Jayanthi also, the assignment in favour of Panchi and Korapaly was relied on, but to say that it was cancelled and that after the assignment in favour of the petitioner herein in 1984, she had sold that land in favour of another person.

10. The petitioner's appeal against Ext.P11 order was disposed of by the Sub Collector as per Ext.P14 by reading the proceedings and holding that Ext.P11 order of the Tahsildar stands. That order was issued after noticing the contentions as to the eligibility criteria in terms of assets and income, but without entering any finding on that issue.

11. Ext.P15 revision filed against that order has been dismissed by the impugned Ext.P17 order however, stating that the eligibility of the first respondent herein “for getting land assigned, is to be assessed at the time of proposing the

land in favour of the assignee as per his LA application”.

12. The petitioner claiming to a landless poor contends that the first respondent draws more than Rs.3,000/- per month as pension, he being a retired Railway servant and that he owns and possesses vast extent of land, including Government land in Kasaragod Taluk and therefore, the first respondent is not eligible for assignment. The petitioner asserts that the assignment in her favour, which led to Ext.P8 judgment, was only for an extent of 67 cents and such assignment is to be upheld. The first respondent in his counter affidavit has, among other things, stated that the Revenue authorities are liable to restore the assignment to his parents 'status quo-ante 1936' in his favour and that the writ petitioner does not fall within the term of “family” in terms of Rule 2(d) of the Assignment Rules since she was unmarried.

13. In Ext.P8 judgment, this Court noticed that the counter affidavit of the Government did not disclose that Panchi or his legal representatives were evicted from the land in question in accordance with the Conservancy Act, at any

point of time. The counter affidavit also did not speak of any resumption of that land at any point of time. It was noticed by this Court that documents would reveal that the grand-parents of the petitioner were occupying the 87 cents of property and they had constructed a building in a portion of the property. It was held as highly improbable or unreasonable to believe that they might have abandoned a portion of the property and retained possession of only a portion. In all probability, they should have been in possession of the entire property. The documents were appreciated to notice that they would further show that the application for assignment of permanent patta in respect of the property had been filed as early as in 1957 pursuant to a communication to them to file application in the prescribed manner. This Court noticed that the case of the first respondent herein was that the legal representatives of Panchi were in possession of the property having an extent of 87 cents.

14. Appreciating the materials and adverting to the contentions, it was noticed by this Court in Ext.P8 judgment that 87 cents of property had been assigned to the grand-

parents of the petitioner and that though that assignment was cancelled in 1937, the documents would reveal that they continued to be in possession of the properties and in 1959 they filed application for assignment of permanent patta. It was held that even if the earlier assignment was cancelled, their application should have been considered and appropriate orders should have been passed in accordance with the Assignment Rules as they were in possession of the property. This Court noticed that Section 11 of the Conservancy Act provides a procedure to evict a person in unauthorised occupation of Government land, if the Government wanted to evict him and that the State had no case at any point of time that the Revenue authorities had invoked Section 11 of that Act to evict Panchi or his legal representatives from the premises. The provision for an opportunity of hearing prior to cancellation of assignment as provided by the Assignment Rules, was also taken note of by this Court. Noticing that the application of the petitioner herein was filed only in 1986, that too, claiming prior possession for 10 years, Rule 7 of the Assignment Rules was noticed.

15. Section 3(1) of the Assignment Act provides that lands may be assigned by Government, subject to such restrictions, limitations and conditions as may be prescribed. Section 4 of that Act provides a procedure to be followed before assignment of Government lands. Section 7 empowers the Government to make rules providing the procedure to be followed in assigning the land and matters relatable thereto. The assignment can, therefore, be only in terms of the Assignment Rules, following the procedure prescribed therein and in terms of the restrictions, limitations and conditions as are prescribed by those Rules. Rule 7(1) of the Assignment Rules, which has no application to the case in hand, provides for assignment of lands under lease. Rule 7(2) provides an order of preference in granting registry in cases of unoccupied lands. That sub-rule provides preferences. Sub-rule (3) of Rule 7 of those Rules provides that no registry shall be granted to any family in occupation of Government land either under a lease, current or time expired or by way of encroachment, unless it surrenders to Government, without claiming any compensation, the land in excess of the extent proposed to be registered in its favour.

16. Government lands are national wealth. The concept of providing assignment of unoccupied lands in terms of Rule 7 (2) of the Assignment Rules is predominantly aimed at providing holdings for the financially weaker sections of the society. Encroachments, which are not considered objectionable for the purpose of the Assignment Rules, going by Rule 2(cc), are encroachments on Government lands, which are available for assignment, and such encroachment must be by a person or a family eligible to get land, on registry under those Rules.

17. If an item of property was in the possession of Panchi and his legal representatives much before the Assignment Act and the Assignment Rules came into force and if the property is in possession on the basis of the possession of the predecessors, priority might be given to the legal representatives of Panchi, in assigning the land in view of the Rules, as rightly held by this Court in Ext.P8 judgment. Therefore, the assignment could be made only to inure in favour of all persons entitled to be treated as part of “family”

for the purpose of Assignment Rules, or their successors without ignoring the concept of “family” as conceived in the Assignment Rules.

18. “Family”, for the purpose of Assignment Rules, is defined in Rule 2(d) as including a person, his wife or her husband, their children living with or dependent on them and also the parents who are solely dependent on such person. This concept of family is legislatively derived on the basis of the identification of the wife, husband and children as constituting a family for the purpose of enjoying any right traceable to any occupation or assignment of Government land. Such a provision is in terms of the equality principle underlying the Constitution of India in as much as no classification whatsoever is sought to be made within the family on the basis of gender or lineage. Dependency is made the indicia because, the underlying concept of an assignment of unoccupied land to preferred categories in terms of Rule 7 (2) is to extend a provision intended to overcome vagrancy.

19. Therefore, if Panchi and Korapaly had continued to

be in possession on the basis of assignment under the Assignment Rules or on the basis of their possession which was, at the worst, an encroachment not objectionable in terms of the Assignment Rules, the benefit of such possession shall inure to the benefit of all persons entitled to claim as part of the family of Panchi and Korapaly, without any distinction on the basis of sex or otherwise. This means that Panchi and Korapaly having left behind respondents 1 and 5 and two other children, including the mother of the petitioner, all of them should be held entitled to equal share, if at all they are held entitled to separate parcels in the holding which was in the possession of Panchi and Korapaly. So much so, any assignment thereafter could have been only in the name of and in favour of all of them equally. The question of considering one or more of the children of Panchi and one of his grand-daughters as rival claimants for the purpose of assignment in terms of the Assignment Act and Assignment Rules, does not therefore arise. Any such treatment of their entitlement would be plainly opposed to the scheme of the Assignment Act and Assignment Rules, in the backdrop of the equality principle enshrined in the Constitution.

20. During Ext.P8 proceedings, it was noticed by this Court that the availability of assets in excess of the bench mark under the Assignment Rules was also a moot point between the rival parties. The bench mark as to income fixed by the Assignment Rules is clearly indicative of the legislative intention not to assign Government lands to those who do not satisfy such bench marks and the primary intention is that Government lands, which are assignable in terms of those Rules, should be available as national wealth and the Government and the Officers are obliged in terms of the Conservancy Act and the Conservancy Rules to conserve and preserve the Government lands as part of national wealth. Therefore, any decision to assign Government land without specifically concluding in the proceedings that the applicant satisfies the bench marks prescribed by the Assignment Act and the Assignment Rules, is against public interest and does not withstand the tests on the basis of the statutory rules and therefore, the Rule of law.

21. As already noticed, the impugned orders have been

passed merely by making reference to Ext.P8 judgment by this Court which, in terms, was essentially intended to guide the exercise of statutory power and not issued after concluding issues on facts. This means that the statutory authorities under the Assignment Act and the Assignment Rules were obliged to adjudicate on the rival applications and to consider the entire case as a whole by also viewing it from the conspectus of the claims to possession being referable to Panchi and Korapaly. Bereft of a proper adjudication of those issues on facts, the assignment orders would be baseless.

22. Neither the initial authority under the Assignment Rules nor any among the superior authorities has considered the issue by ascertaining whether the applicants had satisfied the statutory requirements under the Assignment Act or Rules. No finding, as enjoined by law, has been entered by those authorities in the impugned orders.

23. For the aforesaid reasons, the impugned orders are liable to be set aside, leaving the statutory authorities to de novo consider the requests of the petitioner and the first

respondent for assignment, in the light of what is stated above.

In the result, this writ petition is allowed quashing Exts.P11, P14 and P17 orders. It is directed that the applications of the petitioner and the first respondent, for assignment, will be taken de novo and considered in accordance with law in the light of what is stated above. Let such a decision be taken by the competent Tahsildar within four months from the date of receipt of a copy of this judgment. Needless to say, such decision shall state the reasons thereof, particularly because, any person aggrieved by such order is entitled to statutory remedies by way of appeal, revision etc. as provided by the Assignment Act and Assignment Rules. No costs.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

- true copy-

P.S.to Judge.